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10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
12

13 GUADALUPE CASTANEDA,  
14 a minor, by and through her Guardian  
15 ad Litem, RUMUALDO CASTANEDA,  
16 et.al,

17 Plaintiffs,

18 vs.

19 ROBERT WENDELL, et al.,

20 Defendants.  
21 \_\_\_\_\_/

CASE NO. 1: 05 CV-0604 OWW DLB

FINDINGS AND RECOMMENDATIONS ON  
MOTION TO MODIFY APPROVAL OF  
MINOR'S COMPROMISE  
(Doc. 65)

OBJECTIONS DUE MAY 10, 2007

22 **INTRODUCTION**

23 \_\_\_\_\_On July 17, 2006, a hearing was held for approval of the settlement of the minor Guadalupe  
24 Castaneda by and through her Guardian ad Litem, Rumualdo Castaneda with defendants Robert  
25 Wendell, Dalila Hernandez, Luciana Naldi, Livingston High School and Merced Union High School for  
26 the sum of \$45,000.00 in Department 9 of the above entitled court. The Motion to Approve Consent  
27 Judgment Rule of Civil Procedure 68 Offer of Judgment resolving Claim of Minor was granted and the  
28 settlement was approved. It was approved that payment out of the settlement proceeds in the amount  
of \$12,060.47 be made payable to Perez, Williams & Medina for attorneys' fees and costs. The net

1 balance of the settlement in the amount of \$32,939.53 was to be used to purchase Treasury Bonds to  
2 mature on or after the date the minor reached the age of majority.

3 Delays were encountered in receiving payment of the settlement proceeds. Payment was  
4 forwarded to the Guardian ad Litem on January 23, 2007. The payment is currently being held in trust.

5 The Guardian ad litem, Rumualdo Castaneda now seeks a modification of the prior order  
6 approving the settlement to:

- 7 1. Allow Rumualdo Castaneda, as the Guardian ad Litem and natural father of the minor,  
8 to utilize the net settlement proceeds for the purchase of real estate located in the greater  
9 Merced County. The Guardian ad Litem proposes to purchase the real estate and place  
10 the minor's name on the title and record it as such in the Merced County Recorder's  
11 office; or in the alternative,
- 12 2. Deposit the net proceeds in a blocked trust account held with a banking institution  
13 insured with the Federal Deposit Insurance Corporation. The funds to be made available  
14 to the minor after she turns 18 years of age or September 19, 2008.

15 A hearing was held on the Motion to Modify Approval of Minor's Compromise on April 20,  
16 2007. Lazaro Salazar appeared on behalf of the Guardian ad Litem. The minor was also present.

17 **FACTUAL BACKGROUND**

18 The minor Guadalupe Castaneda is a female born September 19, 1990 and is approximately  
19 fifteen years of age. This action arises out of an incident that occurred on December 4, 2004 in which  
20 Livingston High School vice-principal Dalila Hernandez and physical education teacher Luciana Naldi  
21 came to the girl's locker room at Livingston High School and detained over 67 female students,  
22 including plaintiffs, in an effort to locate \$21.00 reported missing during a physical education class and  
23 personally detained and searched students, back packs, purses and personal belongings. Not having  
24 found the missing \$21.00 after said searches, vice-principal Dalila Hernandez and physical education  
25 teacher Luciana Naldi, dismissed other students but continued to detain and otherwise refused to release  
26 the plaintiffs. It is alleged that vice principal Dalila Hernandez then, after the initial detention, contacted  
27 principal Robert Wendell, who expressly approved, permitted and directed both Dalila Hernandez and  
28 Luciana Naldi to force the plaintiffs to enter an office area within the girl's locker room and submit to

1 a strip search wherein the plaintiffs were forced to undress to their bras and panties. Said forced  
2 submission to a strip search was conducted near a large window where other students present at the time  
3 could and did observe plaintiffs as they were forced to submit to the above described search.

4 The detention, personal search and strip search of plaintiffs did not turn up the missing \$21.00  
5 and at no time were charges ever filed against any of the plaintiffs. The plaintiffs, all young high school  
6 students, were each highly embarrassed and humiliated by the incident. Following the incident the girls  
7 were subject to jokes and teasing by other students at their school. When the well liked principal, Robert  
8 Wendell, was transferred to another school and demoted to the position of teacher, the girls were further  
9 harassed by other students that blamed them for the actions taken against Mr. Wendell. The incident  
10 has made their high school experience extremely unpleasant. Plaintiffs sustained no permanent physical  
11 injuries from this incident.

12 This action was filed on May 4, 2005. By way of settlement, Guadalupe Castaneda, by and  
13 through her Guardian ad Litem Rumualdo Castaneda, accepted a Federal Rule of Civil Procedure  
14 Section 68 Offer of Judgment served by defendants Robert Wendell; Dalila Hernandez, Luciana Naldi,  
15 Livingston High School and Merced Union High School District, for the sum of \$45,000.00.

### 16 DISCUSSION

17 \_\_\_\_\_ This Court's Local Rule 17-202 addresses settlements for minors and provides in pertinent part:

18 (b) Settlement. No claim by . . . a minor . . . may be settled or compromised  
19 absent court order by the assigned Judge or Magistrate Judge approving the settlement  
20 or compromise.

21 . . .

22 (2) Such application [for minor's compromise] shall disclose, among  
23 other things, the age and sex of the minor . . . , the nature of the causes of action to be  
24 settled or compromised, the facts and circumstances out of which the causes of action  
arose, including the time, place and persons involved, the manner in which the  
compromise amount or other consideration was determined, including such additional  
information as may be required to enable the Court to determine the fairness of the  
settlement or compromise . . .

25 . . .

26 (c) Disclosure of Attorney's Interest. When the minor . . . is represented by an  
27 attorney, it shall be disclosed to the Court by whom and the terms under which the  
28 attorney was employed . . . and whether the attorney has received or expects to receive  
any compensation, from whom, and the amount.

1 . . .

2 (e) Payment of Judgment. Whenever money . . . is recovered on behalf of a  
3 minor . . . the money . . . will be (1) disbursed to the representative pursuant to state law  
4 upon a showing that he is the duly qualified representative under state law, (2) disbursed  
otherwise pursuant to state law, or (3) disbursed pursuant to such other order as the Court  
deems proper for the protection of the minor . . .

5 F.R.Civ.P. 17(c) empowers a district court to make such “order as it deems proper for the  
6 protection” of a minor. “Federal courts generally require that claims by minors . . . be settled in  
7 accordance with applicable state law. California law requires *court approval* of the fairness and terms  
8 of the settlement.” 2 Schwarzer, Tashima & Wagstaffe, California Practice Guide, *Federal Procedure*  
9 *Before Trial* (2002) Pretrial Conference and Settlement Procedures, para. 15:138, p. 15-42 (emphasis  
10 in original). A settlement for a minor and attorney fees to represent a minor must be approved by the  
11 court. Cal. Prob. Code, § 3601; Cal. Fam. Code, § 6602. Reasonable expenses and court costs to be  
12 paid out of the settlement also must be approved by the court. Cal. Prob. Code, § 3601.

13 The Court finds that the best interests and protection of the minor are better served by having the  
14 net settlement proceeds deposited in a blocked account held with a banking institution that is insured  
15 with the Federal Deposit Insurance Corporation until the minor reaches the age of 18. The purchase of  
16 real estate as proposed by the Guardian ad litem would not be in the best interests of the minor as the  
17 money would potentially not be available to her when she turns 18. While the Court recognizes the  
18 benefit to the minor’s family from the proposed purchase, the minor’s interests alone must guide the  
19 Court’s decision. The minor is more protected by an investment that is easily obtainable should she  
20 require use of the money.

## 21 CONCLUSION AND RECOMMENDATIONS

22 For the reasons discussed above, this Court RECOMMENDS to:

- 23 1. GRANT the Motion to Modify the Approval of the Minor’s Compromise;
- 24 2. ORDER the minor’s \$32,939.53 share to be deposited in a blocked account held with a  
25 banking institution that is insured with the Federal Deposit Insurance Corporation until  
26 the minor reaches the age of majority.

27 These findings and recommendations are submitted to United States District Judge Oliver W.  
28 Wanger, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 72-304. On or before May

1 10, 2007, any party may file written objections with the court and serve a copy on all parties. Such a  
2 document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The  
3 Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties  
4 are advised that failure to file objections within the specified time may waive the right to appeal the  
5 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

6  
7 IT IS SO ORDERED.

8 **Dated: May 2, 2007**

**/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE